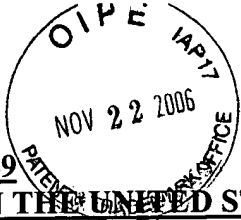


S/N 09/685,449



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Jeff Chin et al.

Examiner: Ella Colbert

Serial No.: 09/685,449

Group Art Unit: 3624

Filed: October 11, 2000

Docket No.: 2043.166US1

Title: SALES SYSTEM WITH BUYER PRICE SELECTION

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

In response to the Advisory Action mailed September 12, 2006, Applicants request review of the final rejection of claims in the above-identified Application. No amendments are submitted with this Request, which is filed with a Notice of Appeal for the reasons stated below.

§103 Rejection of the Claims

Claims 1-9, 17, 29-33, 35-43 and 45-46: Claims 1-9, 17, 29-33, 35-43 and 45-46 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Nahan et al. (U.S. 5,664,111) in view of Fisher et al. (U.S. 5,835,896). Applicants respectfully disagree with this rejection because the Office has not established a *prima facie* case of obviousness because the cited art does not teach or suggest all of the claim limitations. Among the differences, claim 1 recites “notifying the user when the entry in the variable price schedule is reached.” Claim 17 recites “means for communicating a variable price schedule for the item to the user, the variable price schedule including a plurality of price selections for the item.” In the Advisory Action, the Office indicated the following with regard to the above-recited limitation:

According to the steps in the claims, notifying a user when an entry is the variable price schedule is reached would have been obvious and performed anyway and the results would have been the same. Figure 22 discusses displaying a variable price and a difference ratio in col. 13, lines 3-39 and lines 47-53 placing an order (an entry) in the Nahan reference. Advisory Action at page 2.

Applicants respectfully traverse this assertion. In general, Nahan relates to viewing and purchasing works of art over a network, and Fisher relates to “conducting an interactive auction over an electronic network.” Fisher at column 1, lines 8-9. However, neither Nahan nor Fisher disclose or suggest the above-recited limitation, regarding the “variable price schedule.”

In the Advisory Action, the Office cited Figure 22, col. 13, lines 3-39 and lines 47-53 in Nahan as disclosing this limitation. Applicants respectfully traverse this assertion. Figure 22 of Nahan illustrates the operations for displaying of a price for a work of art. There is no disclosure or suggestion of a variable price schedule. Nahan at col. 13, lines 3-39 relates to displaying a history of prices for a work of art. Nahan at col. 13, lines 47-53 relates to transmission of data over the network for confirming an order for a work of art. Nahan does not disclose or suggest a variable price schedule. In particular, a history of prices is not a variable price schedule. The “historical record of prices” relates to a list of prices at which a specific piece of artwork has been previously sold. The “variable price schedule” relates to the schedule of pricing at which an item can be bought – “a plurality of price selections for the item.” See claim 1. Regardless of whether these two terms are interpreted as the same, Nahan does not disclose the notifying of a user when an entry in the variable price schedule is reached.

In the Advisory Action, the Office indicated the following regarding Fisher:

Fisher in col. 7, lines 8-23 discusses notifying a customer (User) when a bid is placed, updated, and showing the bids. Bids can be variable in price such as an auction on e-Bay or Yahoo. Advisory Action at page 2.

Thus, the Office generally references auctions from e-Bay or Yahoo for disclosing the variable price schedule for an item. However, no reference is cited. Moreover, the Office does not cite a section of Fisher that does disclose a variable price schedule.

Also, in the Advisory Action, with regard to claim 1, the Office indicated that the following claim limitation “is unclear because it cannot be determined where or who the reminder command is received from.” Advisory Action at page 2.

receiving a reminder command associated with a selection of an entry in the variable price schedule from the user, the reminder command including a price selection from the plurality of the price selections for the item.

Applicants respectfully submit that the claim language is definite. With regard to definiteness under 35 U.S.C. 112, 2nd paragraph,

[t]he essential inquiry pertaining to this requirement is whether the claims set out and circumscribe a particular subject matter with a reasonable degree of clarity and particularity. Definiteness of claim language must be analyzed, not in a vacuum, but in light of: (A) The content of the particular application disclosure; (B) The teachings of the prior art; and (C) The claim interpretation that would be given by one possessing the ordinary level of skill in the pertinent art at the time the invention was made. (emphasis added) MPEP 2173.02.

Thus, referencing the application, the reminder logic 12D in Figure 1 and accompanying description provide an example of where and who the reminder command is received from. Because the cited references do not disclose or suggest all of the claim limitations, Applicants respectfully submit that the rejections of claims 1 and 17 under 35 U.S.C. §103 have been overcome. Additionally, because claims 2-9, 29-33, 45-43, 45 and 46 depend from and further define claim 1, Applicants respectfully submit that the rejections of claims 2-9, 29-33, 45-43, 45 and 46 under 35 U.S.C. §103 have been overcome.

Claim 8: Additionally, with regard to claim 8, among the differences, claim 8 recites “wherein acceptance of the reminder command in the receiving of a reminder command from the user is contingent on the receipt of contact information in a step of receiving contact information for the user, but wherein the presenting of the item is independent of the receipt of any contact information from the user.” In the Advisory Action, in light of the traversal of Official Notice in the response to the final office action, the Office cited Godin (U.S. 5,890,138) at column 2, lines 54-63. Therefore, Applicants assume that claim 8 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Nahan in view of Fisher in view of Godin. Applicants respectfully disagree with this rejection because the Office has not established a *prima facie* case of obviousness because the cited art does not teach or suggest all of the claim limitations. The cited section in Godin relates to different operations performed by the web server as part of the auction process (e.g., displaying price/quantity for a product). However, this section does not disclose or suggest that the presenting of the item is independent of the receipt of any contact information from the user. Accordingly, because the cited references do not disclose or suggest all of the claim limitations, Applicants respectfully submit that the rejection of claim 8 under 35 U.S.C. §103 has been overcome.

Claims 10-11 and 44: Claims 10-11 and 44 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Nahan et al. in view of Fisher et al. and further in view of Godin et al.

(U.S. 5,890,138). Applicants respectfully disagree with this rejection because the Office has not established a *prima facie* case of obviousness because the cited art does not teach or suggest all of the claim limitations. With regard to claim 10, among the differences, claim 10 recites “wherein the presenting of the item information includes presenting the plurality of price selections for the item including a plurality of time-separated price choices from a falling-price schedule.” With regard to claim 11, among the differences, claim 11 recites “displaying a present purchase control button next to the present price and a future purchase control button next to the future price.” In the Advisory Action, the Office indicated the following with regard to the above-recited limitations:

It is interpreted that Godin discloses the products to be auctioned (presenting a plurality of price selections) and the Web browser returning to the Web site (a plurality of time-separated price choices) and in Godin col. 4, lines 23-29 – “a user can index through the number of screens to get information on products to be auctioned”. It is obvious that the products would also include price information. Figure 8 in Godin on the screen recites “to view the products on other days, just select the date”. This is interpreted as showing the present product and price and a future product and a price when clicked.” Advisory Action at page 2.

Applicants respectfully traverse this assertion. In general, Godin relates to an auction where the prices of products decrease over time (assuming that products remain). However, this cited section does not disclose that the schedule for the falling prices is presented to the user. Only that the price falls over time. Accordingly, the user does not know schedule of the times and associated falling prices.

In the Advisory Action, the Office indicates that because Godin discloses a price for each of multiple products, Godin discloses a plurality of price selections for a particular item. Applicants disagree. Prices for multiple products are not the same as a plurality of price selections for a particular item. The Office then recites Godin at column 4, lines 23-29. Again, this cited section in Godin relates to information on multiple products. This section does not disclose a plurality of price selections for a particular item. Next, the Office indicates that the statement “To view products on other days, just select the date” in Figure 8 of Godin is interpreted as showing a present product/price and a future product/price. This statement in Figure 8 does not disclose a falling-price schedule for an item. Rather, it allows a user to view other products on other days based on the date of the auction. Accordingly, because the cited

references do not disclose or suggest all of the claim limitations, Applicants respectfully submit that the rejections of claims 10-11 and 44 under 35 U.S.C. §103 have been overcome.

In the Advisory Action, the Office noted the following:

Claims 1-10 do not claim a "control button". Claim 9 recites "a single click". In claim 10, is the presenting of the item information from "a single click" or from a "control button" as in claim 11? Advisory Action at page 2.

Applicants respectfully submit that claim 10 is sufficiently definite as claimed (see MPEP 2173.02 cited above). Claim 10 is not dependent on claim 9. Moreover, claim 10 does not require that the presenting be from either a single click or from a control button. Thus, claim 10 is sufficiently definite. Because the cited references do not disclose or suggest all of the claim limitations, Applicants respectfully submit that the rejections of claims 10-11 and 44 under 35 U.S.C. §103 have been overcome.

CONCLUSION

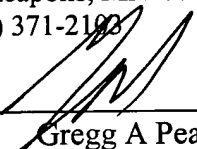
Reconsideration and withdrawal of the rejections under § 103 as a result of this Pre-Appeal Brief Request for Review is respectfully requested. The Examiner is invited to telephone Applicants' attorney at (612) 371-2103 to facilitate prosecution of this application. If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,
JEFF CHIN, ET AL.
By their Representatives,
SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.
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Date

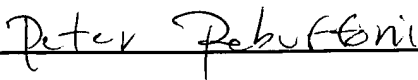
1/20/06

By


Gregg A Peacock
Reg. No. 45,001

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop AF, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 20th day of November, 2006.

Name



Signature

